IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

WRIT PETITION NO. 5425 OF 2006.

Keshav Chandrakant Dixit ... Petitioner.
V/s.
Sau Sushma @ Kanchan Keshav Dixit... Respondent.

Shri V.S. Mhaispurkar for the petitioner.

CORAM : V.C.DAGA, J.

DATED : 11.9..2006.

P.C. :

. Heard learned Counsel for the petition.

Perused petition.

2. During the course of hearing learned Counsel for the petitioner sought permission to withdraw the application filed under Order 26 Rule 10(a) of the Code of Civil Procedure, 1908, for scientific investigation by appointing Court Commissioner, marked Ex.68 in the record of the trial Court. In view of the prayer, he is allowed to withdraw the application (Ex.68). Needless to mention that with the withdrawal of the application, the impugned order dated 29.6.2006, shall not survive.

3. It is further clarified that it would be open for the petitioner to move appropriate application for appointing Court Commissioner for scientific investigation after evidence of both the parties is over. While considering fresh

application moved by the petitioner, the trial Court shall take into account the necessity of medical evidence to appreciate the evidence already brought on record. In the event the trial Court comes to the conclusion that assistance of medical expert is necessary, then, in that event, it would be open for the trial Court to appoint Court Commissioner for scientific investigation, after hearing both the parties by a reasoned order.

4. Petition accordingly stands disposed of as infructuous with no order as to costs.

(V.C.DAGA,J.)